

**IN THE COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

**ORDER AMENDING RULE 5
OF THE COURT OF COMMON PLEAS
RULES OF CIVIL PROCEDURE**

This 20th day of November, 2008, IT IS ORDERED that:

- 1) Court of Common Pleas Civil Rule 5 is amended by deleting the material in brackets and including the material underlined, as follows:

Rule 5. Service and Filing of Pleadings and Other Papers.

(a) *Service: When Required.* Except as otherwise provided in these Rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the Court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(aa)(1) *Appearance: When; How Made; Withdrawal.* Except as otherwise provided by statute, a defendant may appear though a summons has not been served upon the defendant. Appearance may be made by the service and filing of notice thereof, or by the service or filing of any motion or pleading purporting to be responsive to, or affecting the complaint, except that appearance for purpose of satisfying a judgment, when appearance may be made by notation thereof on the judgment docket. An attorney may withdraw the attorney's appearance without obtaining the Court's permission where such withdrawal will leave a member of the Delaware Bar appearing as attorney of record for the party. Otherwise, no appearance shall be withdrawn except on order of the Court. Except in the case of a party appearing pro hoc vice, all papers filed with this Court shall be signed by an attorney who is an active member of the Bar of the Delaware Supreme Court, and who maintains an office in Delaware for the practice of law as defined by Delaware *Supreme Court Rule 12(d)*.

(aa)(2) *Appearance of Garnishee: When; How Made.* Any garnishee duly summoned (either on mesne writ of attachment or execution process) shall serve upon plaintiff a verified answer within 20 days after service of process, which shall specify what goods, chattels, rights, credits, money or effects of a defendant, if any, the garnishee has in the garnishee's possession or custody. Within 10 days after service of such answer, plaintiff may serve exceptions thereto, and the proceedings on the issues thus raised shall be had as in actions commenced by summons. If no exceptions are filed by plaintiff to garnishee's answer within the 10-day period as aforesaid, a delivery to the sheriff of the property set forth in the answer by the garnishee, or so much of it as shall satisfy plaintiff's demand, shall be a discharge of the garnishee in the proceedings, and the sheriff shall make a suitable supplemental return on the writ showing the property which has been delivered to the sheriff by the garnishee, and shall dispose of such property as directed by the writ. Unless the garnishee delivers such property to the sheriff within 5 days after the expiration of the 10-day period for plaintiff's exceptions, if any, the sheriff shall on written direction of the plaintiff physically seize any property subject to seizure, and with respect to any property set forth in the answer, which is not seized or delivered to the sheriff, the plaintiff on motion may have personal judgment entered against the garnishee in favor of plaintiff in an amount equal to the value of the property of defendant in garnishee's custody or possession, or the amount of the plaintiff's judgment, whichever is less, with interest and costs. Before the sheriff shall serve any writ of attachment, the sheriff shall receive from the plaintiff the [sum of \$20] fee for each party to be summoned as garnishee (except as to garnishment governed by the terms of 10 *Del.C.* § 4913) and said [sum] fee shall be delivered to each garnishee when the summons is served; the return on the writ of garnishment will show the garnishee fee paid, which will be taxed as costs in the case; no garnishee will be required to answer without first having received the garnishee fee as aforesaid.

(b) *Service of Pleadings and Papers: How Made.* Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party personally is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing it to the attorney or the party at the attorney's or party's last known address or, if no address is known, by leaving it with the Clerk of the Court. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the attorney's or the party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(1) In any action involving a claim for personal injuries, the defendant shall file and serve with his answer, answers to the interrogatories appearing in Superior Court Rules Form 30.

(2) If a counterclaim, cross-claim or third-party complaint for personal injuries is filed, the defendant in such claim shall file with the answer that discovery which is required of

a defendant in a complaint for personal injuries.

(3) The prerequisites of Rule 5(b)(1) may for good cause shown be waived by order of the Court.

(c) *Same: Numerous Defendants.* In any action in which there are unusually large numbers of defendants, the Court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the Court directs.

(d) *Filing.* All papers after the complaint required to be served upon a party shall be filed with the Court within a reasonable time after service thereof subject to the following provisions.

(1) All requests for discovery under *Court of Common Pleas Civil Rules 31, 33, 34, 35 and 36* and answers and responses shall be served upon all appearing counsel or parties appearing pro se but shall not be filed with the Court. In lieu thereof, the party requesting discovery and the party serving responses thereto shall file with the Court a "Notice of Service" containing the following information:

(a) a certification that a particular form of discovery or response was served on other counsel or opposing parties, and

(b) the date and manner of service.

(2) The party responsible for service of the request for discovery and the party responsible for the response shall retain the originals and become the custodian of them. The party taking an oral deposition shall be custodian of the original; no copy shall be filed except pursuant to subparagraph (3). In cases involving out-of-state counsel, local counsel shall be the custodian.

(3) If depositions, interrogatories, requests for documents, requests for admission, answers or responses are to be used at trial or are necessary to a pretrial or post-trial motion, the verbatim portions thereof considered pertinent by the parties shall be filed with the Court when relied upon.

(4) When discovery not previously filed with the Court is needed for appeal purposes, the Court, on its own motion, on motion by any party or by stipulation of counsel, shall order the necessary material delivered by the custodian to the Court.

(5) The Court, on its own motion, on motion by any party or an application by a non-party, may order the custodian to file the original of any discovery document.

(6) When discovery materials are to be filed with the Court other than during trial, the filing party shall file the material together with a notice setting forth an itemized list of the material.

(7) It shall be the duty of the party on whose behalf a deposition was taken to make certain that the officer before whom it was taken has delivered the original transcript to such party. Unless otherwise ordered by the Court, any deposition which has been filed pursuant to this Rule may be unsealed by the Clerk of the Court.

(e) *Filing With the Court Defined.* The filing of pleadings and other papers with the Court as required by these Rules shall be made by filing them with the Clerk of the Court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and transmit them to the office of the Clerk of the Court. Papers may be filed by facsimile transmission or electronically if permitted by these Rules, by administrative order, or by a judge.

(f) *Proof of Service of Papers.* Unless otherwise ordered, no pleading or other paper, required by these Rules to be served by the party filing the paper, shall be filed unless the original thereof shall have endorsed thereon a receipt of service of a copy thereof by all parties required to be served or it shall be accompanied by affidavit showing that service has been made and how made or it shall be accompanied by a certificate of an attorney of record showing service has been made and how.

(g) *Sealing of Court Records.* (1) Except as otherwise provided by statute or rule, including this Rule 5(g) and Rule 26(c), all pleadings and other papers of any nature filed with [the Clerk of] the Court, including briefs, appendices, letters, deposition transcripts and exhibits, answers to interrogatories and requests for admissions, responses to requests for production or certificates and exhibits thereto ("Court Records"), shall become a part of the public record of the proceedings before this Court.

(2) Court Records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of this Court specifying those Court Records, categories of Court Records, or portions thereof which shall be placed under seal; provided, however, the Court may, in its discretion, receive and review any document in camera without public disclosure thereof and, in connection with any such review, may determine whether good cause exists for the sealing of such documents; and provided further that, unless the Court orders otherwise, the parties shall file within 30 days redacted public versions of any Court Record where only a portion thereof is to be placed under seal.

(3) The provisions of paragraph (2) of this Rule 5(g) notwithstanding, the Court may, in its discretion, by appropriate order, authorize any person to designate Court Records to be placed under seal pending a judicial determination of the specific Court Records, categories, or portions thereof to which such restriction on public access shall continue to apply.

(4) Any person who objects to the continued restriction on public access to any Court

Record placed under seal pursuant to paragraphs (2) or (3) of this Rule 5(g) shall give written notice of his or her objection to the person who designated the Court Record for filing under seal and shall file such written notice with the Court. To the extent that any person seeks to continue the restriction on public access to such Court Record, he or she shall serve and file an application within seven days after receipt of such written notice setting forth the grounds for such continued restriction and requesting a judicial determination whether good cause exists therefor. In such circumstances, the Court shall promptly make such a determination.

(5) The [Clerk of the] Court shall promptly unseal any Court Record in the absence of timely compliance with the provisions of this Rule 5(g), if applicable. In addition, 30 days after final judgment has been entered without any appeal having been taken therefrom, the Clerk of the Court shall send a notice, return receipt requested, to any person who designated a Court Record to be placed under seal that such Court Record shall be released from confidential treatment if required to be kept by the Clerk or, if not required to be kept, returned to the person at the person's expense or destroyed, as such person may elect, unless that person makes application to the Court within 30 days after notice from the Clerk for further confidential treatment for good cause shown.

2) This amendment is effective February 16, 2009.

Chief Judge

Judge

Judge

Judge

Judge

Judge

Judge

Judge

Judge